

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

John L. Brower #21650-057,

PETITIONER

v.

Kenny Atkinson,

RESPONDENT

C/A No. 2:13-cv-03428-TLW

Order

Petitioner John L. Brower, proceeding *pro se*, submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging a sentence imposed on him in the Middle District of North Carolina. The matter now comes before the Court for review of the Report and Recommendation (Report) filed on February 4, 2014 by Magistrate Judge Hendricks, to whom this case was assigned. (Doc. #13.) In the Report, the Magistrate Judge recommends dismissing the petition without prejudice and without requiring Respondent to file an answer or return. The basis of this recommendation is that Petitioner's claim is not properly raised in a § 2241 habeas petition and cannot be saved by § 2255's savings clause. The Magistrate Judge noted that if Petitioner believes he is entitled to relief under *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) and *Miller v. United States*, 735 F.3d 141 (4th Cir. 2013), his remedy is to obtain permission to file a successive § 2255 petition from the Fourth Circuit, not file a § 2241 petition. Petitioner filed objections on February 20, 2014. (Doc. #17.) This matter is now ripe for decision.

In reviewing the Magistrate Judge's recommendation, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any

party may file written objections The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Hous. Auth. of City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in *Wallace*, the Court has reviewed, *de novo*, the Report and the objections. After careful review of the Report and the objections, for the reasons stated by the Magistrate Judge, the Report is **ACCEPTED**. Petitioner's objections are **OVERRULED**. Petitioner's motion for relief pursuant to § 2241 is **DENIED**. This action is hereby **DISMISSED WITHOUT PREJUDICE**.

The Court has reviewed this petition in accordance with Rule 11 of the Rules Governing Section 2254 Proceedings. The Court concludes that it is not appropriate to issue a certificate of appealability as to the issues raised in this petition. Petitioner is advised that he may seek a certificate from the Fourth Circuit Court of Appeals under Rule 22 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

s/ Terry L. Wooten
Terry L. Wooten
Chief United States District Judge

March 6, 2014
Columbia, South Carolina